

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

ROBERTS TECHNOLOGY GROUP, INC.

Plaintiff

v.

CURWOOD, INC.

Defendant.

CIVIL ACTION

NO. 14-5677

**DEFENDANT'S FINAL PRETRIAL MEMORANDUM**

This matter is scheduled for a Final Pretrial Conference held on October 16, 2015, at 1:00pm.

**I. NATURE OF ACTION AND JURISDICTION**

- A. This is an action for an alleged breach of contract relating to the distribution and sale of food trays and film.
- B. The jurisdiction of this Court is invoked under 28 U.S.C. § 1332.
- C. The jurisdiction of this Court is not disputed.
- D. Venue in this Court is not disputed.

**II. TRIAL INFORMATION**

- A. The estimated length of trial is 3 days.
- B. Trial to the jury has been set for on or after October 30, 2015.

**III. DEFENDANT'S STATEMENT OF THE FACTS**

This action arises from the sale and distribution of food trays and film manufactured by Defendant, Curwood, Inc. ("Curwood"). The Plaintiff, Roberts Technology Group, Inc. ("RTG"), purchased food trays and film from Curwood to be sold to end-users. RTG lost its business with several customers and has now brought this litigation against Curwood.

RTG did not have a contract with Curwood. There was no written or signed contract, and instead, Curwood sold its products to RTG on a per-order basis. RTG has alleged in this litigation that there was an enforceable agreement between the parties based on an exchange of email communications. Emails between Michael Cheadle of RTG and Peter Wright of Curwood evidence some general understanding of the relationship between the parties, but not an enforceable agreement. Moreover, according to RTG, the email communications encompass the entirety of the alleged contract. At no point in any of the email communications did the parties state, or even contemplate, a duration for which the supposed agreement was intended to be enforceable, thereby making any agreement terminable at will.

RTG sold trays manufactured by Curwood to only nine customers. RTG's largest customer was Aramark, Corp. ("Aramark"), who used trays manufactured by Curwood to service the Philadelphia Prison System. Aramark and RTG signed three short term non-binding agreements for the purchase of food trays, with no such agreement lasting more than one year. During the course of Aramark's final one-year non-binding agreement with RTG, the business relationship soured. Aramark made the unilateral decision to cease business with RTG at the end of its final non-binding agreement, which terminated in May 2013. To ensure continued service by Aramark to the Philadelphia Prison System, in light of certain service issues with RTG, and for its own business objectives and purposes, Aramark approached defendant Curwood and sought to do business directly with Curwood. After May 2013, when the non-binding agreement between RTG and Aramark terminated, Curwood began selling its food trays to Aramark for use at the Philadelphia Prison System.

RTG has claimed it was "protected" as to the sale of trays to certain identified customers, including Aramark, because of emails exchanged between the parties. Furthermore, RTG has

claimed this “protection” would last until the end of time. At no point in any communication between the parties was there an expression or implication of a duration for which the relationship between the parties would last. Moreover, whatever “protection” existed, if at all, was understood to cease if and when RTG was unable to maintain a good relationship with an end-user. Aramark approached Curwood because of certain service issues with RTG and for Aramark’s own business purposes and objectives, evidencing that Plaintiff was unable to maintain a good relationship with its end-user.

In addition to the Plaintiff’s failure to maintain a good relationship with the end-users, it also failed to pay three outstanding invoices owed to Curwood, giving rise to the Defendant’s counter-claim. These invoices total \$82,933.20, and were for the sale of trays manufactured by Curwood and sold to RTG. There is no dispute that these trays were sold and delivered, nor is there a dispute that the invoices are presently outstanding.

#### **IV. DEFENDANT’S LIST OF DAMAGES**

- A. \$82,933.20— Outstanding invoices issued by Curwood to RTG.

#### **V. FACT WITNESSES**

Defendant will call or have available for testimony at trial the following liability witnesses:

1. Walt S. Flaherty  
Aramark  
Current employer: Lintons Mngd. Services  
4 Sentry Parkway East  
Suite 100  
Blue Bell, PA 19422

Mr. Flaherty was employed by Aramark during the relevant time as general manager of the Philadelphia Prison System. He is expected to testify concerning the business relationship between Aramark and RTG.

2. Orlando Carugno  
Philadelphia Prison Systems

1907 State Road  
Philadelphia, PA 19136

Mr. Carugno was the Chief of Operations for the Philadelphia Prison System. He is expected to testify concerning the business relationship and service provided by Aramark and RTG to the Philadelphia Prison System.

3. Peter Wright  
Curwood  
220 Badger Ave.  
P.O. Box 2968  
Oshkosh, WI 54903

Mr. Wright was a sales representative employed by Curwood. He is expected to testify concerning the business relationship between Curwood, RTG, and certain customers. Mr. Wright is also expected to testify on the operations and procedures of Curwood.

4. Paul Vanden Heuvel  
Curwood  
220 Badger Ave.  
P.O. Box 2968  
Oshkosh, WI 54903

Mr. Vanden Heuvel was a director of marketing for Curwood. He is expected to testify concerning the business relationship between the parties. Mr. Vanden Heuvel is also expected to testify on the operations and procedures of Curwood.

5. Angela Hawkins  
Curwood  
220 Badger Ave.  
P.O. Box 2968  
Oshkosh, WI 54903

Ms. Hawkins is an account specialist for Curwood. She is expected to testify concerning the business relationship between the parties. Ms. Hawkins is also expected to testify on the operations and procedures of Curwood.

6. Carrie Wagner  
Curwood  
220 Badger Ave.  
P.O. Box 2968  
Oshkosh, WI 54903

Ms. Wagner is a customer service representative for Curwood. She is expected to testify concerning the business relationship between the parties.

Ms. Wagner is also expected to testify on the operations and procedures of Curwood.

7. Salvatore Sacco  
RTG  
120 New Britain Blvd.  
Chalfont, PA 18914

Mr. Sacco is a service manager employed by Roberts Technology Group. He is expected to testify concerning the business practices and relationships of RTG and certain customers.

8. Robert Cheatle  
RTG  
120 New Britain Blvd.  
Chalfont, PA 18914

Robert Cheatle is an owner of RTG. He is expected to testify concerning the business of RTG, and its relationship with Curwood.

9. Thomas Cheatle  
RTG  
120 New Britain Blvd.  
Chalfont, PA 18914

Thomas Cheatle is the Vice President of RTG. He is expected to testify concerning the business of RTG, and its relationship with Curwood.

10. Carty McMullen  
Aramark  
203 Woodshyre Court  
Lawrenceville, GA 30043

Ms. McMullen was the Regional Vice President for Aramark. She is expected to testify concerning the business relationship between Aramark, RTG, and Curwood, as well as Aramark's operations as they relate to this litigation.

11. Michael Cheatle  
RTG  
120 New Britain Blvd.  
Chalfont, PA 18914

Michael Cheatle is a sales representative employed by RTG. He is expected to testify concerning the business of RTG, and its relationship with Curwood, Aramark, and other RTG customers.

12. Angela Frattone  
RTG  
120 New Britain Blvd.  
Chalfont, PA 18914

Ms. Frattone was an employee of RTG. She is expected to testify concerning the business operations of RTG, as well as the shipment and delivery of products to customers.

13. Tony Grispino  
RTG  
120 New Britain Blvd.  
Chalfont, PA 18914

Mr. Grispino was an employee of RTG. He is expected to testify concerning the business operations of RTG.

14. Armand Castelli  
Aramark  
395 Lighthouse Dr.  
Manahawkin, NJ 08050

Mr. Castelli was a food services director employed by Aramark. He is expected to testify concerning the business relationship between Aramark, RTG, and Curwood, as well as Aramark's operations as they relate to this litigation.

Defendant will call or have available for testimony at trial the following damages witnesses for its claims:

15. Terri Williamson  
Curwood  
3033 East 16th St.  
Russellville, AR 72802

Ms. Williamson is a production planner employed by Curwood. She is expected to testify concerning the business relationship between RTG and Curwood, as well as the billing associated with Curwood's customers.

16. Paul Vanden Heuvel  
Curwood  
220 Badger Ave.  
P.O. Box 2968  
Oshkosh, WI 54903

Mr. Vanden Heuvel was a director of marketing for Curwood. He is expected to testify concerning the business relationship between the parties.

Mr. Vanden Heuvel is also expected to testify on the operations and procedures of Curwood.

By designating certain witnesses as “liability” or “damages” witnesses, Defendant is not agreeing to limit any witness’s testimony. Rather, Defendant has made this designation based upon its good faith understanding of the primary focus of the witness’s testimony. A witness may have relevant testimony pertaining to both liability and damages, and each witness should be permitted to testify consistent with the Federal Rules of Evidence.

**VI. EXPERT WITNESSES**

Defendant will call the following expert witness, whose name has been disclosed to opposing counsel:

Glenn Newman. Mr. Newman will testify regarding the damages alleged by RTG and rebut the testimony offered by the plaintiff’s damages expert.

**VII. DESIGNATION OF DEPOSITION TESTIMONY**

Defendant does not anticipate offering any witnesses by way of deposition testimony at trial.

**VIII. EXHIBITS**

A schedule of Defendant’s exhibits is attached hereto as Appendix A.

To date, Defendant has not been served with Plaintiff’s exhibit list, and therefore Defendant cannot identify its contested exhibits. Counsel for RTG has stated that a list of RTG’s exhibits will be provided Friday, September 18, 2015.

Defendant served its exhibit list on Plaintiff on September 15, 2015, and has not received any objections from Plaintiff.

**IX. STIPULATIONS OF COUNSEL**

Counsel have made no stipulations.

Respectfully submitted,

/s/ Dexter R. Hamilton

Dexter R. Hamilton

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*Attorneys for Defendant, Curwood, Inc.*

**APPENDIX A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

ROBERTS TECHNOLOGY GROUP, INC.  
Plaintiff

v.

CURWOOD, INC.  
Defendant.

CIVIL ACTION

NO. 14-5677

**DEFENDANT, CURWOOD, INC.'S PROPOSED EXHIBIT LIST**

Pursuant to Paragraph 1 of the Court's August 4, 2015 Order (Doc. No. 47), Defendant, Curwood, Inc. ("Curwood") notifies Plaintiff, Roberts Technology Group, Inc. ("RTG"), of the following exhibits that Curwood may introduce at trial. Curwood reserves the right to amend this list up to the time of trial, to introduce or use any exhibits listed by RTG, and to offer additional exhibits as appropriate based upon issues that arise at trial.

<b><u>Number</u></b>	<b><u>Bates No.</u></b>	<b><u>Description</u></b>
1.	CU00000004	July 12, 2011 Email between RTG and Curwood
2.	CU00000004-5	July 12, 2011 Email Chain between Curwood and RTG
3.	CU00000039-41	July 18, 2011 Email Chain between Curwood and RTG
4.	CU00000047-48	July 18, 2011 Curwood Email Chain
5.	CU00000054	July 19, 2011 Email between Curwood and RTG
6.	CU00000069-70	July 19, 2011 Email Chain between Curwood and RTG
7.	CU00000459-61	September 9, 2011 Email Chain between Curwood and RTG
8.	CU00000643-44	September 28, 2011 RTG-Curwood Email
9.	CU00000650	September 30, 2011 RTG-Curwood Email
10.	CU00000656	October 4, 2011 Email between Curwood and RTG

<u>Number</u>	<u>Bates No.</u>	<u>Description</u>
11.	CU0000689	October 11, 2011 Email between Curwood and RTG
12.	CU0002154	October 30, 2012 Email between Aramark and Curwood
13.	CU0002166-68	November 6, 2012 Curwood Email
14.	CU0002173	November 8, 2012 Email between Aramark and Curwood
15.	CU0002238-240	January 4, 2013 Email Curwood Email Chain
16.	CU0002567-68	February 19, 2013 Curwood-Aramark Email
17.	CU0002567-68	February 19, 2013 Email between Aramark and Curwood
18.	CU0002701-05	May 1, 2013 Curwood Email Chain with Aramark Agreement
19.	CU0003046-47	December 13, 2013 Email between P. VandenHeuvel and D. Engen
20.	CU0003048-49	December 13, 2013 Email between P. VandenHeuvel and D. Engen
21.	CU0007222	September 27, 2012 Curwood Email
22.	CU0008015-17	October 3, 2012 Email between RTG and Curwood
23.	CU0008798-800	August 13, 2012 Email between Curwood and RTG
24.	CU0009587-88	March 20, 2012 Email Chain between Curwood and RTG
25.	CU0009709-10	March 2, 2012 Email between Curwood and RTG
26.	CU0010535	August 27, 2013 Email between RTG and Curwood
27.	CU0010551	August 21, 2013 Curwood Invoice to RTG for Unpaid Balance
28.	CU0010592	Curwood Unpaid July 3, 2013 Purchaser Order by RTG
29.	CU0011096-98	July 1, 2013 Curwood Email
30.	CU0011457-58	June 20, 2013 Curwood Email
31.	CU0012235-39	May 31, 2013 Curwood Email Chain

<b><u>Number</u></b>	<b><u>Bates No.</u></b>	<b><u>Description</u></b>
32.	CU0013192-93	April 29, 2013 Email between RTG and Curwood
33.	CU0013432	May 13, 2013 Curwood Email
34.	CU0013685-86	May 10, 2013 Curwood Email
35.	CU0014034-37	January 29, 2013 Email Chain between Curwood and Aramark
36.	CU0014087	May 10, 2013 Curwood Email
37.	CU0015828	January 10, 2013 Aramark Meeting Request
38.	CU0017649-650	May 9, 2013 Email between Curwood and RTG
39.	CU0018030-32	May 2, 2013 Email between RTG and Curwood
40.	CU0018365	May 21, 2013 Curwood Email
41.	CU0018402-03	Carty McMullen Certification
42.	MSJ00206	Mike Cheatle List of RTG customers
43.	N/A	RTG's Responses to Curwood's First Set of Interrogatories
44.	N/A	RTG's Complaint and Exhibits
45.	RTG 000004	August 21, 2013 Email between RTG and Curwood
46.	RTG 000011-12	May 14, 2013 RTG Email Chain
47.	RTG 000013	May 7, 2013 Email between Aramark and RTG
48.	RTG 000020	October 4, 2012 Email between RTG and Aramark
49.	RTG 000029-30	September 7, 2012 RTG Email Chain
50.	RTG 000041	August 9, 2012 Email between RTG and Aramark
51.	RTG 000043-44	July 31, 2012 Email Chain between RTG and Aramark
52.	RTG 000065-67	May 29, 2012 Email Chain between RTG and Aramark
53.	RTG 000065-68	May 29, 2012 Email Chain between RTG and Aramark
54.	RTG 000069-72	May 29, 2012 Email Chain between RTG and Aramark

<u>Number</u>	<u>Bates No.</u>	<u>Description</u>
55.	RTG 000069-72	May 29, 2012 Email Chain between RTG and Aramark
56.	RTG 000076	May 22, 2012 Email between RTG and Aramark
57.	RTG 000086-87	May 3, 2012 Email between RTG and Aramark
58.	RTG 000090	May 1, 2012 Email between RTG and Aramark
59.	RTG 000090-91	May 1, 2012 Email Chain between RTG, Aramark and Philadelphia Corrections
60.	RTG 000096	April 20, 2012 Email between RTG and Curwood
61.	RTG 000098-99	April 9, 2012 Email Chain between RTG and Curwood
62.	RTG 000105-06	October 5, 2011 Email Chain between RTG and Curwood
63.	RTG 000109-110	September 15, 2011 Email Chain between RTG and Curwood
64.	RTG 000127-130	July 20, 2011 Email Chain between RTG and Curwood
65.	RTG 000143-46	September 6, 2013 Email Chain between RTG and MOW Central Maryland
66.	RTG 000163	April 5, 2012 Email between MOW Central Maryland and RTG
67.	RTG 000164-66	April 4, 2012 Email Chain between MOW Central Maryland and RTG
68.	RTG 000167-70	April 4, 2012 Email Chain between MOW Central Maryland and RTG
69.	RTG 000171-185	Email Chain between RTG and MOW Central Maryland
70.	RTG 000235-37	October 23, 2012 Email between MOW Northampton and RTG
71.	RTG 000245	July 31, 2013 Email Chain between RTG and Aramark
72.	RTG 000246	July 29, 2013 Email Chain between RTG and Aramark
73.	RTG 000253	June 14, 2013 Email Chain between RTG and Aramark

<b><u>Number</u></b>	<b><u>Bates No.</u></b>	<b><u>Description</u></b>
74.	RTG 000260-63	April 3, 2013 Email with Attachment between RTG and Aramark
75.	RTG 000265-66	February 3, 2013 Email Chain between RTG and Aramark
76.	RTG 000279-280	September 14, 2012 Email Chain between RTG and Aramark
77.	RTG 000281-82	September 14, 2012 Email Chain between RTG and Aramark
78.	RTG 000316-320	August 29, 2011 Email Chain between RTG and Aramark
79.	RTG 000380	September 30, 2012 Email between RTG and Curwood
80.	RTG 000381	September 28, 2011 Email between RTG and Curwood
81.	RTG 000392-92	September 15, 2011 Email Chain between RTG and Curwood
82.	RTG 000402-06	August 26, 2011 Email Chain with attachment between RTG and Curwood
83.	RTG 000412-458	RTG Invoices
84.	RTG 000504-48	Curwood-RTG Invoices
85.	RTG 000505	Curwood Unpaid June 7, 2013 Purchase Order by RTG
86.	RTG 000505-07	RTG Invoices re: Aramark
87.	RTG 000506	Curwood Unpaid May 20, 2013 Purchase Order RTG
88.	RTG 000627-30	RTG Invoices re: Aramark
89.	RTG 000660-689	RTG Invoices re: MOW Northampton
90.	RTG 001024-26	October 23, 2012 Email Chain between MOW Northampton and RTG
91.	RTG 001034	July 31, 2013 Email between RTG and Aramark
92.	RTG 001035	July 29, 2013 Email between RTG and Aramark
93.	RTG 001042	June 14, 2013 Email between RTG and Aramark

<u>Number</u>	<u>Bates No.</u>	<u>Description</u>
94.	RTG 001061	October 23, 2012 Email between RTG and Aramark
95.	RTG 001068	September 24, 2012 Email between RTG and Aramark
96.	RTG 001070-71	September 14, 2014 Email between RTG and Aramark
97.	RTG 001169	September 30, 2011 Email between RTG and Curwood
98.	RTG 001170	September 28, 2011 Email between RTG and Curwood
99.	RTG 001181-85	September 15, 2011 Email with attachments between RTG and Curwood
100.	RTG 001218	May 11, 2012 RTG Warranty Service Summary
101.	RTG 001221-265	RTG Warranty Service Summaries re: Aramark DOC
102.	RTG 001224-25	December 28, 2011 RTG Warranty Service Summary
103.	RTG 001351	February 14, 2013 Email between RTG and Valley Services
104.	RTG 001357	February 1, 2013 Email between RTG and Valley Services
105.	RTG 001657-58	April 1, 2013 Email between T. Cheatle and M. Cheatle
106.	RTG 001807-812	RTG Email with Aramark Letters of Understanding
107.	RTG 001835-1836	December 2011 RTG-Aramark Letter of Understanding
108.	RTG 001853-54	April 2012 RTG-Aramark Letter of Understanding
109.	RTG 001874-76	September 20, 2012 Email Chain between RTG and Curwood
110.	RTG 001943	May 1, 2012 Email between RTG and Aramark
111.	RTG 001947-48	May 2013 Unsigned RTG-Aramark Letter of Understanding

Date: September 15, 2015

Respectfully submitted,

COZEN O'CONNOR

By: /s/ Dexter R. Hamilton

Dexter R. Hamilton

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2015, I served a copy of Defendant's Final Pretrial Memorandum on the following via the Court's electronic filing system:

Brian Grady  
Grady Law Offices  
1500 John F. Kennedy, Blvd.  
2 Penn Center, Suite 1020  
Philadelphia, PA 19102

/s/ Dexter R. Hamilton  
Dexter R. Hamilton